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JUN 16 19
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] /85

ERNEST JOSEPH GIBAS, DONALD DOWD FULTON and MICHAEL EMMETT BYRNE,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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vs.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Ernest Joseph Gibas, Donald Dowd Fulton and Michael Emmett Byrne respectfully pray that a writ of certiorari issue to review the judgment of the Seventh Circuit entered in the above case on March 19, 1962.

OPINIONS BELOW.

The opinion of the court below (Appendix C, p. 10a, *infra*) is reported at 300 F. 2d 836. The district court did not hand down any opinion.

JURISDICTION.

The judgment of the court below was entered on March 19, 1962 (Appendix D, p. 17a, *infra*). A petition for rehearing duly filed by petitioners was denied on April 17, 1962. On May 14, 1962, the time within which to file a petition for a writ of certiorari was extended to and

including June 16, 1962 by an order signed by Mr. Justice Clarke. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

QUESTIONS PRESENTED.

As to the petitioner, Michael Emmett Byrne:

1. Can a conviction for conspiracy under 18 U.S.C. 371 and for substantive offense stand as to one defendant where the court of appeals refused to review the sufficiency of the evidence to go to the jury on the only substantive charge against him because of the existence of a concurrent sentence on the conspiracy count and there is no evidence that he knew of, or participated in, any of the conduct of the other defendants which constitutes either the conspiracy or the substantive offense?

As to all of the petitioners:

2. Whether the guarantee of a trial by jury set forth in Article 3, Section 2, Clause 3, of the Constitution of the United States and in the Sixth Amendment thereto or proper procedure is violated when the trial judge directs the jury in a federal criminal trial to find certain issues of fact against the defendants on the ground that the evidence in their favor was insufficient.

3. Whether the due process clause of the Fifth Amendment to the Constitution of the United States or Section 302 (b) and (d) of the Labor Management Relations Act (29 U.S.C. 186 (b) and (d)) is violated by applying such section in a manner which renders entirely innocent conduct criminal in that the trial court instructed the jury so that the defendants could be convicted without either knowledge of the law or evil motive.

4. Whether the language of Section 302 (b), which limits its prohibition to "representatives of employees" receiving payment from the "employer of such employees," was properly construed by the trial court when it instructed the jury that the contractor making the payment did not need to have in his employ at the time of the payment any person represented by the defendants.

STATUTES INVOLVED.

The pertinent provisions of the Labor Management Relations Act of 1947, 61 Stat. 157, 29 U.S.C. 186 and of the Federal Criminal Conspiracy Act, 62 Stat. 791, 18 U.S.C. 371 are set forth in Appendix A, *infra*, p. 1a.

STATEMENT OF THE CASE.

Each of the petitioners, Gibas, Fulton and Byrne, hereinafter sometimes referred to as defendants, was prosecuted criminally under an indictment containing 50 counts, the first charging a conspiracy in violation of Section 371, Title 18, United States Code (App. p. 1a[1]) and the other 49 counts charging substantive violations of Section 302 (b) of the Labor Management Relations Act (App. 8-65).

The indictment.

The first count charged a conspiracy between the defendants and Tagney and "diverse other persons" whose names were unknown, to be representatives of members of Local 136 of the Machinery, Movers, Riggers and

[1] Nine copies of each of the two appendices used below have been filed here. The volume designated on the cover "Appendix," which contains the pleadings, transcript of testimony and judgment in the district court, is hereinafter referred to by the designation "App." The volume designated on the cover "Exhibit Volume," which contains photostats of exhibits, is hereinafter referred to by the designation "Photo."